

MONTANA LEGISLATIVE HISTORY

Chapter 519 19 91

Bill H _____ S 49 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 05 ☒ C

Feb 06 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 06 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 21 ☒ C

Jan 22 ☒ C

_____ ☐ C

_____ ☐ C

Jan 22 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Note: A Free Conference Committee was appointed.
Its minutes were not recorded.

1/24	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/30	HEARING		
1/30	TABLED IN COMMITTEE		

SB 49 INTRODUCED BY WATERMAN, ET AL.
 CREATE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS
 ON OR NEAR SCHOOL PROPERTY
 BY REQUEST OF BOARD OF CRIME CONTROL

1/03	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/04	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/22	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED	50	0
1/24	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
2/05	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/09	2ND READING CONCURRED	89	7
2/09	SEGREGATED FROM COMMITTEE OF WHOLE REPORT		
2/12	2ND READING CONCURRED AS AMENDED	98	1
2/13	3RD READING CONCURRED	97	1
	RETURNED TO SENATE WITH AMENDMENTS		
2/15	2ND READING AMENDMENTS NOT CONCURRED	49	0
3/06	CONFERENCE COMMITTEE APPOINTED		
3/28	CONFERENCE COMMITTEE DISSOLVED		
3/28	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/09	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	45	0
4/10	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
	HOUSE		
3/08	CONFERENCE COMMITTEE APPOINTED		
4/03	CONFERENCE COMMITTEE DISSOLVED		
4/03	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	95	0
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	95	2
4/17	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 519		
	EFFECTIVE DATE: 10/01/91		

SB 50 INTRODUCED BY GAGE
 ELIMINATE DEPARTMENT OF REVENUE'S DUTY TO ISSUE
 TAX-PAID CAMPER DECALS
 BY REQUEST OF DEPARTMENT OF REVENUE

1/03 INTRODUCED

SENATE BILL NO. 49

INTRODUCED BY WATERMAN, JACOBSON, HALLIGAN, HOCKETT,
WEEDING, BARDANOUE, SCHYE, GRADY, DARKO, RANEY, BROOKE,
FORRESTER, COCCHIARELLA, DOLEZAL, J. RICE, J. BROWN,
MESSMORE, H. HANSON, GILBERT, FOSTER, KASTEN,
BERGSAGEL, MERCER, GRINDE
BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

JANUARY 3, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
JANUARY 12, 1991	ON MOTION, ADDITIONAL SPONSORS ADDED.
JANUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 23, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 24, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 6, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1991	SECOND READING, CONCURRED IN.
	SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT AND RETURNED TO SECOND READING.
FEBRUARY 11, 1991	ON MOTION, CONSIDERATION PASSED.

FEBRUARY 12, 1991

SECOND READING, CONCURRED IN AS
AMENDED.

FEBRUARY 13, 1991

THIRD READING, CONCURRED IN.
AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

FEBRUARY 15, 1991

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

MARCH 6, 1991

CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

MARCH 8, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 28, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 3, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 8, 1991

FREE CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 8, 1991

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 9, 1991

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 10, 1991

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 10, 1991

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1991

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 12, 1991

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 49

INTRODUCED BY WATERMAN

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS ON OR NEAR SCHOOL PROPERTY; PROVIDING PENALTIES; CREATING AN AFFIRMATIVE DEFENSE; AND AMENDING SECTIONS 46-18-201, 46-18-231, AND 46-23-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Criminal sale of dangerous

drugs on or near school property -- penalty -- affirmative defense. (1) A person commits the offense of criminal sale of dangerous drugs on or near school property if he violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school or vocational school.

(2) Except as provided in 46-18-222, a person convicted of criminal sale of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 2 years or more than life; and

(b) may be fined an amount of not more than \$50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court---appointed court-appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a

condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1].

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed,

1 imposition of the sentence was deferred, or execution of the
2 sentence was suspended.

3 (7) If the victim was less than 16 years old, the
4 imposition or execution of the first 30 days of a sentence
5 of imprisonment imposed under 45-5-502(3), 45-5-503,
6 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
7 suspended. Section 46-18-222 does not apply to the first 30
8 days of such imprisonment.

9 (8) In imposing a sentence on a defendant convicted of
10 a sexual offense as defined in 46-23-502, the court may not
11 waive the registration requirement provided in 46-18-254,
12 46-18-255, and Title 46, chapter 23, part 5.

13 (9) A person convicted of a sexual offense, as defined
14 in 46-23-502, and sentenced to imprisonment in the state
15 prison shall enroll in the educational phase of the prison's
16 sexual offender program."

17 **Section 3.** Section 46-18-231, MCA, is amended to read:

18 "46-18-231. Fines in felony and misdemeanor cases. (1)
19 Whenever, upon a verdict or a plea of guilty, a person has
20 been found guilty of an offense for which a felony penalty
21 of imprisonment could be imposed, the court may impose a
22 fine, only in accordance with subsection (3), and in lieu of
23 or in addition to a sentence of imprisonment. For those
24 crimes for which penalties are provided in 45-5-103,
25 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2),

1 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and
2 (5)(d), 45-9-102(3), and 45-9-103(2), and [section 1], a
3 fine may be imposed in accordance with subsection (3) in
4 addition to a sentence of imprisonment.

5 (2) Whenever, upon a verdict or plea of guilty, a
6 person has been found guilty of an offense for which a
7 misdemeanor penalty of a fine could be imposed, the court
8 may impose a fine only in accordance with subsection (3).

9 (3) The court may not sentence a defendant to pay a
10 fine unless the defendant is or will be able to pay the
11 fine. In determining the amount and method of payment, the
12 court shall take into account the nature of the crime
13 committed, the financial resources of the defendant, and the
14 nature of the burden that payment of the fine will impose.

15 (4) Any fine levied under this section in a felony case
16 shall be in an amount fixed by the court not to exceed
17 \$50,000."

18 **Section 4.** Section 46-23-201, MCA, is amended to read:

19 "46-23-201. Prisoners eligible for parole. (1) Subject
20 to the restrictions contained in subsections (2) through {4}
21 (5), the board may release on parole by appropriate order
22 any person confined in the Montana state prison or the
23 women's correction center, except persons under sentence of
24 death and persons serving sentences imposed under
25 46-18-202(2), when in its opinion there is reasonable

1 probability that the prisoner can be released without
2 detriment to the prisoner or to the community.

3 (2) A convict serving a time sentence may not be
4 paroled until he has served at least one-half of his full
5 term, less the good time allowance provided for in
6 53-30-105; except ~~that~~ as provided in subsection (3), a
7 convict designated as a nondangerous offender under
8 46-18-404 may be paroled after he has served one-quarter of
9 his full term, less the good time allowance provided for in
10 53-30-105. Any offender serving a time sentence may be
11 paroled after he has served, upon his term of sentence,
12 17 1/2 years.

13 (3) A convict serving a time sentence under [section 1]
14 may not be paroled until he has served at least one-half of
15 his full term, less the good time allowance provided for in
16 53-30-105.

17 ~~†3†~~(4) A convict serving a life sentence may not be
18 paroled until he has served 30 years, less the good time
19 allowance provided for in 53-30-105.

20 ~~†4†~~(5) A parole may be ordered only for the best
21 interests of society and not as an award of clemency or a
22 reduction of sentence or pardon. A prisoner may be placed on
23 parole only when the board believes that he is able and
24 willing to fulfill the obligations of a law-abiding citizen.

25 ~~†5†~~(6) If the department of institutions certifies to

1 the board that the population at the Montana state prison
2 exceeds its design capacity of 744 by 96 inmates or that the
3 population at the women's correction center exceeds its
4 design capacity of 35 inmates and that the prison or the
5 center has exceeded its capacity for a period of more than
6 30 days, the board shall consider convicts in the
7 institution in which the design capacity has been exceeded
8 eligible for parole 120 days prior to the eligibility dates
9 provided for in subsections (2) ~~and-†3†~~ through (4).

10 ~~†6†~~(7) Regardless of length of sentence, if the
11 conditions of parole eligibility are met within the initial
12 12 months of incarceration at Montana state prison, the
13 provisions of subsection ~~†5†~~(6) do not apply."

14 NEW SECTION. **Section 5.** Codification instruction.
15 [Section 1] is intended to be codified as an integral part
16 of Title 45, chapter 9, part 1, and the provisions of Title
17 45, chapter 9, part 1, apply to [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0049, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating the offense of criminal sale of dangerous drugs on or near school property, providing penalties, and creating an affirmative defense.

ASSUMPTIONS:

1. Prison admissions solely for drug crimes have tripled (from 26 to 73 admissions) since 1986.
2. Admissions will increase by an additional three inmates per year and length of stay will increase.
3. Variable cost is \$4.62 per day per inmate (3 inmates x \$4.62 = \$13.86 x 365 days = \$5,059 per year).

FISCAL IMPACT:

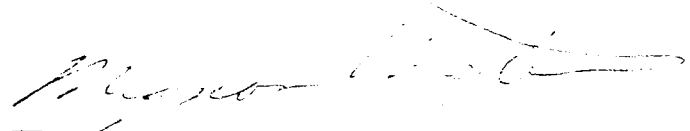
Department of Institutions:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	0	5,059	5,059	0	5,059	5,059
<u>Funding:</u>						
General Fund	0	5,059	5,059	0	5,059	5,059

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

No known data on potential fine revenue from convictions under the bill.


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning
 1-10-91
 DATE


 MIGNON WATERMAN, PRIMARY SPONSOR
 1-10-91
 DATE
 Fiscal Note for SB0049, as introduced
 49

Mr. Robinson stated that if the tribes and regulatory authorities can't compact, it may end up in arbitration. He commented that the tribes appear to be willing to work with the Gambling Control Division to remain within state law.

Mr. Robinson advised the Committee he couldn't tell if SB 53 will open the door to shaking for a drink or a pot on Indian reservations. He stated that if the court were to interpret prize limits or the Legislature would define what a game is, there would be a better chance of regulating gaming on reservations.

Senator Grosfield asked if shaking for the pot could be for any amount on a reservation. Mr. Robinson replied that reservations can negotiate for a non-profit benefit for anything, so the pot could be for any amount.

Senator Towe stated that if there is no compact, theoretically there is no authority. He asked how the cases referred to in Indian Gaming were resolved. Mr. Robinson replied that the district court appoints a mediator who takes one or the other of proposed compacts and then either party has 60 days in which to accept or reject that compact. He added that if the compact is rejected the matter goes to the Secretary of the Interior.

HEARING ON SENATE BILL 49

Presentation and Opening Statement by Sponsor:

Senator Mignon Waterman, District 22, said she believes SB 49 strengthens the rules, making it especially grievous to sell drugs in or near schools and provides both a penalty and a fine.

Proponents' Testimony:

Edwin Hall, Administrator, Board of Crime Control, provided copies of information on Drug-free School Zones, and charts showing percentages of students who have ever tried a drug and where students have used drugs. He also provided a list of Drug Task Force Members for 1990-1991 (Exhibits #4 and 5).

Mr. Hall said the short-term goals are more focused in the area of undercover work, while long-term goals focus on education through project DARE. He said data shows there were 1360 drug arrests in 1989, and that these arrests appear to be increasing at a rate of 4.4 percent annually.

Mr. Hall explained that six percent of highschoolers use drugs during school and ten percent use them around school. He advised the Committee that training would be held soon in Portland on drug-free school zones, and that he hoped to attend as this is important to Montana.

John Connor, Montana County Attorneys Association, said a legislative subcommittee of the Drug Task Force met last March to

decide on three bills as a proposed agenda. He told the Committee SB 49 is one of those bills. Mr. Connor added that prior to this legislation being introduced, Idaho, Tennessee, and Montana were the only states without legislation for drug-free school zones.

Mr. Connor said information from the American Legislative Subcommittee Task Force on Substance Abuse was used in formulating language for this bill, along with that of other states and federal law.

Mr. Connor told the Committee that some law, such as the federal playground provisions, are too vague for Montana. He reported that some states include colleges and universities, but the 1,000 foot limit is fairly standard. Mr. Connor said there are federal cases addressing this issue in which it has been concluded that Congress had a right to address this problem and to protect children from drugs.

Mr. Connor explained that the bill addresses sales occurring in the presence of anyone 17 years of age or younger. He told the Committee penalties in some states are doubled for school drug sales. He said 46-18-201, MCA, imposes a mandatory minimum sentence and it is required that an individual must serve at least half of that time before he or she is eligible for parole.

Mr. Connor stated it is important to address the problem in concept and get publicity out as a deterrent. He said Montana is scheduled to receive \$2.25 million and \$2.232 million amount for the drug-free school act.

Mr. Connor reported that a 1990 white paper stressed cutting-off community sources of drugs, and determined that learning processes are undermined by use of drugs.

Bruce Moerer, Montana School Boards Association, told the Committee his association had a bill draft request in, but decided to support SB 49 instead. He said the bill is a positive step in drug education and enforcement, and that the Association wished to go on record as being as concerned as anyone else.

Judy Birch, Guidance and Pre-School Specialist, Office of Public Instruction (OPI), read from prepared testimony on behalf of the Superintendent of Public Instruction in support of the bill.

Jesse Long, Executive Directors, School Administrators in Montana, said it is important to develop community awareness programs.

Darryl Bruno, Chief, Chemical Dependency Bureau, Department of Institutions (DOI), read from prepared testimony in support of SB 49.

Phil Campbell, Montana Education Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of SB 49.

Questions from the Committee:

Senator Rye asked if most drug sales were done at school by peers, and how much good it would do to enact this Legislation. He asked if a ten-year-old child could be prosecuted under this provision. John Connor replied that the seller would be charged and pursued as a delinquent youth and would probably be put on probation. He said it is unlikely that a 16- to 18-year-old would be transferred to adult court. Mr. Connor said county attorneys do a lot of drug prosecution of mostly 18- to 20-year-olds selling drugs out of cars at or near school.

Senator Crippen asked what happened to similar legislation passed one or two sessions ago. John Connor replied that he believed Representative Bardanouve sponsored the legislation which never made it to the Senate.

Chairman Pinsoneault forewarned proponents to further define school property in the bill to eliminate problems if kids are spread out in different areas for educational purposes.

Senator Towe asked what SB 49 adds to the law. John Connor replied it increases penalties and sets mandatory minimums in 46-18-201, MCA, section 2, subsection 4 which can't be waived. He said the meat of the bill is in section one.

Closing by Sponsor:

Senator Waterman recognized the cooperation among business, schools, and law enforcement and urged the Committee to give SB 49 a do pass recommendation.

HEARING ON SENATE BILL 57Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, presented SB 57 in the absence of Senator Yellowtail, sponsor of the bill. Senator Mazurek told the Committee SB 57 allows for the use of two-way audio/visual communication equipment in court. He said a judge has the discretion to order defendants to physically appear, so the electronic equipment is optional.

Senator Mazurek stated that section 4 of the bill is the same scenario set-up for presentation of evidence and the same safeguards are in place. He explained that electronic equipment can also be used for arraignment, and that the bill is an effort to recognize advanced technology to save time and travel costs for counties. He commented it is particularly important as the state goes to the regional concept for jails and detention centers.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 21 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SB 49 Briefing
Board of Crime Control

* Title: Commonly known as drug free school zones. "An act creating the offense of criminal sale of dangerous drugs on or near school property; providing penalties; creating an affirmative defense."

* Summary: sale of dangerous drugs within 1,000 feet of a school is an offense punishable by imprisonment of not less than 2 years or more than life and possible fine up to \$50,000 with parole at half term.

* Theory: Reducing the demand for drugs is salient feature of drug control strategy. Drug free school zones are important because: 1. Many youth obtain drugs at or near schools. Preventing sales at or near schools cuts off a common source of drugs. 2. Drug use and sales near schools undercuts the credibility of drug education and prevention programs in schools. 3. All learning is diminished where drug use flourishes. 4. Youth must get and believe the message that the entire community has a stake in a drug free environment. 5. All youth have a right to feel safe and not threatened by drug sales and drug use at or near their schools.

* Data: In Montana in 1989 there were 1,360 drug related offenses reported. During the decade of the 80's drug offenses increase 4.4% per year. Surveys of drug use by students report that 29% used marijuana within the last year, 14.3% within the last 30 days. A 1988 survey completed in a Montana county reports over 50% of 8th grade students having tried marijuana, almost 205 of seniors have tried stimulants, and just under 10% of seniors tried cocaine. This same survey reports about 6% of seniors used drugs during school, and close to 10% of seniors used drugs during school hours but off the campus. Anecdotal information reports the use of beepers and pagers to notify students of 'salesmen' near schools. A GAO report Rural Drug Abuse-Prevalence, Relation to Crime, and Programs (1990) finds drug use in Montana and all rural states to be as prevalent as in urban areas. We are not exempt.

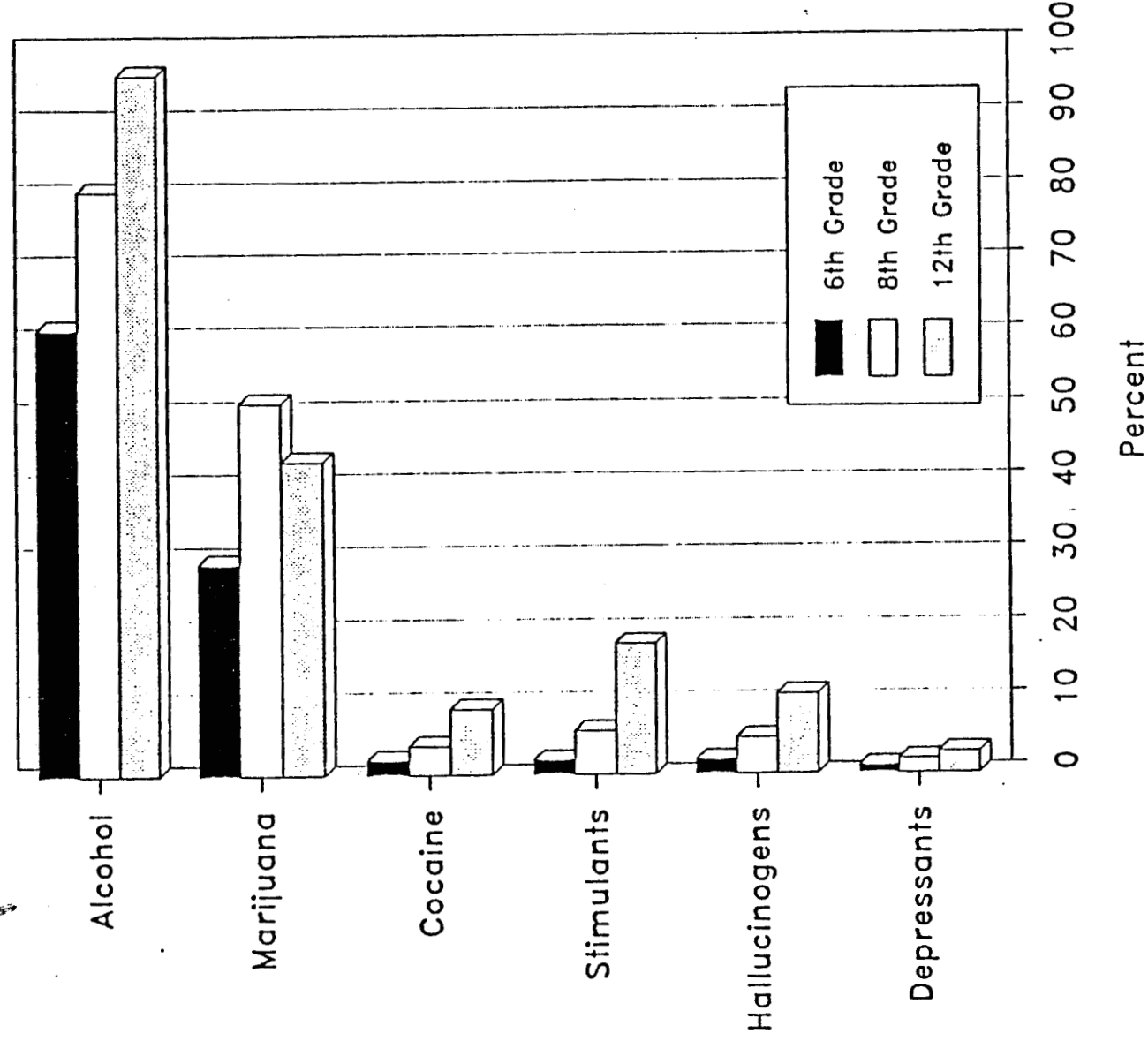
* Other states: In September 1990, eight states did not have drug free school zone legislation. At this time it is believed that number is now two or three states. Drug free school zones started in Alaska. New Jersey is a model often used. Arizona and Florida have successful programs. Montana's legislation is similar.

* Support: Drug free school zone legislation was requested by the 15 member Drug Strategy Task Force of the Montana Board of Crime Control. Drug free school zone legislation is endorsed by the Board. It is supported by the Office of Public Instruction, County Attorneys, and law enforcement.

* Other: Can be a vehicle for proactive law enforcement involvement with the community and the schools. It supports community/school/law enforcement partnerships.

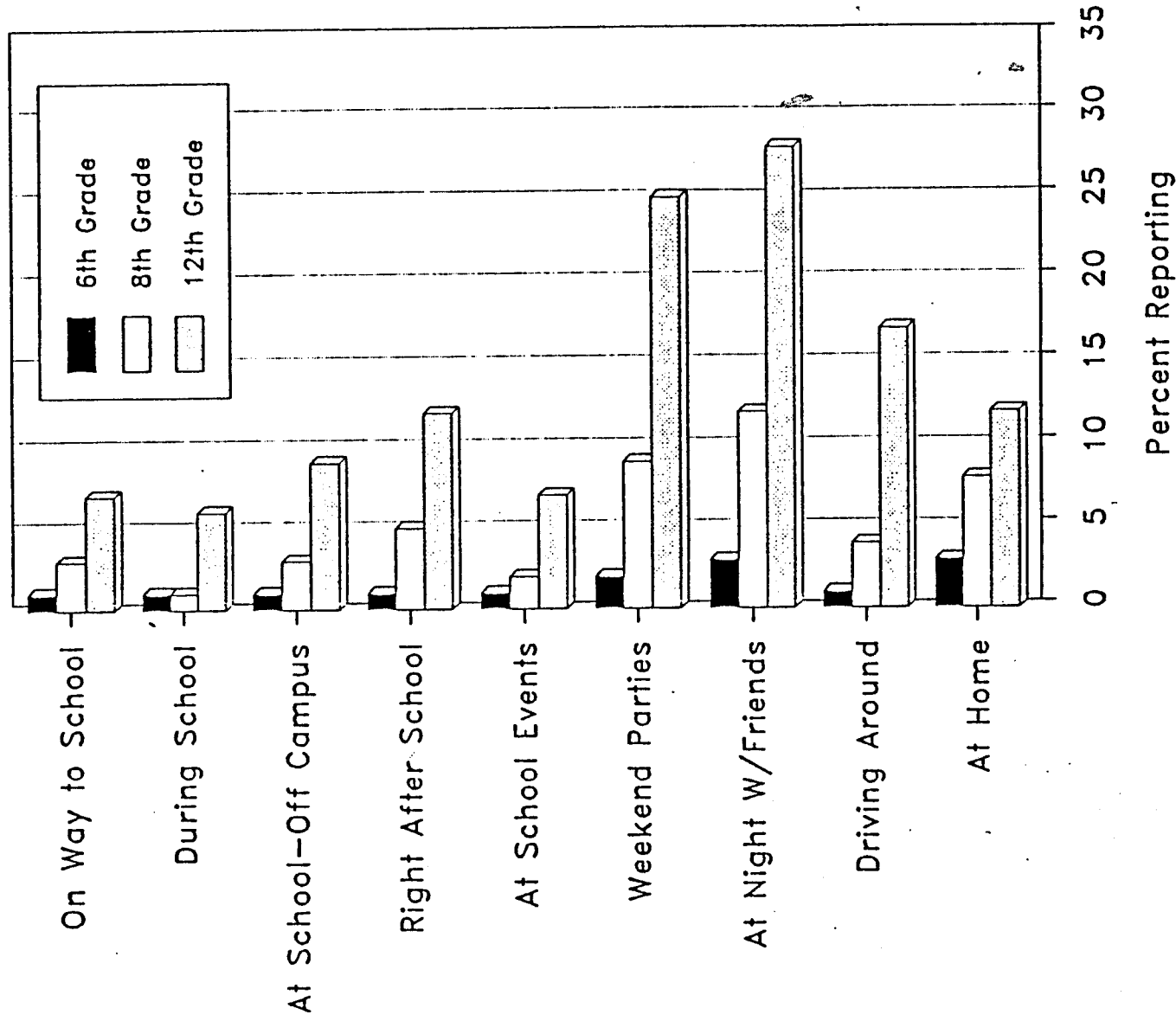
CX 7
1-21-91
SRB 49

Figure 5
Percent of Students Who Have
Ever Tried A Drug



1-21-91
5849

Figure 8
Where Students Have Used Drugs



21 Jan 71
Exhibit 5
SB 49

SB 49

Drug Free School Zones

SB 49 is an act which establishes in Montana what are typically known as Drug Free School Zones. A Board of Crime Control Task Force known as the Drug Strategy Task Force composed of 15 persons representing law enforcement, DEA, Office of Public Instruction, drug programs, legislators, etc. and who have been responsible for outlining Montana's implementation of the National Drug Control Policy, identified three priorities for legislative action in 1991. Drug Free School Zones is one of these. The idea of Drug Free School Zones has been endorsed by the Board as important legislation in the war on drugs. All but two or three states in the Union have enacted similar Drug Free School Zone legislation.

SB 49 creates the offense of criminal sale of dangerous drugs on or near schools and provides a penalty if convicted of not less than 2 years imprisonment and the possibility of a fine not to exceed \$50,000.

There are several witnesses here who can provide additional testimony on the background, philosophy and impact of the bill.

EX. 3
1-21-91
SB 49

DRUG TASK FORCE MEMBERS

1990-1991

Marsha Armstrong
Administrative Officer
Department of Institutions
1539 Eleventh Avenue
Helena, MT 59620

Gary Carrell, Administrator
Law Enforcement Services Division
Department of Justice
303 North Roberts
Helena, MT 59620

John Connor, Jr.
Assistant Attorney General
Attorney General's Office
215 North Sanders
Helena, MT 59620

Honorable Delwyn Gage
State Senator
P.O. Box 1027
Cut Bank, MT 59427

Asst. Chief Ron Kemp
Glendive Police Department
Box 1372
Glendive, MT 59330

Ted O. Lympus
Flathead County Attorney
Flathead County Courthouse
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Deputy Warden of Treatment
Montana State Prison
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215 N. Sanders, Rm. 315
Helena, MT 59620

Spencer Sartorius
Administrator, Health Enhancement
Division
Office of Public Instruction
1300 Eleventh Avenue
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Jim Seykora
Assistant U. S. Attorney
P. O. Box 1478
Billings, MT 59103

Chief Mike Shortell
Havre Police Department
520 - 4th Street
Havre, MT 59501

Honorable William Strizich
State Representative
CCCC Building
1601 - 2nd Avenue North
Great Falls, MT 59401

Honorable Mignon Waterman
State Senator
530 Hazelgreen
Helena, MT 59601

Don Wetzel
Superintendent of Schools
Harlem,
MT 59526 Don

Ben Yarborough
Resident Agent in Charge
Drug Enforcement Administration
P. O. Box 2887
Great Falls, MT 59403

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 49Motion:Discussion:

Chairman Pinsoneault said he believed the bill needed more specific definition of what school property is. Valencia Lane provided the Committee with copies of the proposed amendments (Exhibit #3).

Senator Towe asked if a school bus on the road would be defined as school property. Chairman Pinsoneault replied that was not his intention, but rather to include any school-sponsored activity.

Senator Mazurek said he had concerns with the breadth of the definition of school property in the amendments, as it may run into vagueness. As an example, he cited a drug sale occurring within 1000 feet of a bowling alley where a school-sponsored bowling class is being held.

Valencia Lane commented that the amendment would have a breadth problem. She said federal law includes video arcades, pools, and playgrounds, but John Connor did not include these in drafting.

Chairman Pinsoneault told the Committee he hoped that the amendments would provide more protection.

Valencia Lane advised the committee that Senator Brown carried a similar bill in 1987. Senator Brown explained that the bill was SB 261 which doubled the penalty for sale to minors. He said other language concerning place of sale was removed from the bill in the House.

Amendments, Discussion, and Votes:

Senator Harp made a motion that the amendments be approved. The motion failed in a roll call vote (attached).

Recommendation and Vote:

Senator Brown made a motion that SB 49 DO PASS. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 106

Motion:

Senator Harp made a motion that SB 106 be TABLED, and said he did not believe the bill was workable in any manner.

Discussion:

There was no discussion on SB 106.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Harp that SB 106 be TABLED carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 58

Motion:

Discussion:

Senator Yellowtail commented that he would like to confine jurisdiction for medical and confinement costs to that of the arresting officer. He proposed that the Committee move forward with the bill and leave the intent of the Subcommittee behind.

Senator Yellowtail asked Valencia Lane to make the appropriate amendments applying to both medical and confinements for the jurisdiction of the arresting officer.

Senator Towe asked about the difference between the jurisdiction of the arresting officer and the jurisdiction having its law violated. He said he was concerned about small communities who can't pay, as discussed at the bill hearing on January 21. Senator Yellowtail said he was requesting a reasonable solution to this dilemma.

Senator Towe requested that the Committee look at the issue from the point of the arresting agency. He commented that if it is the laws of the arresting agency which are being violated costs should be paid from where the crime is committed.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52~~nd~~ LEGISLATIVE SESSION -- 1991

Date 22 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 49 (first reading copy -- white), respectfully report that Senate Bill No. 49 do pass.

Signed: _____
Richard Pinsoneault, Chairman

 1/22/91
Amd. Coord.

SIB 1-22-91
Sec. of Senate

205

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 22 Jan 91 Bill No. SB49 Time 11:10 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen		
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Halligan		
Sen. Harp	✓	
Sen. Mazurek		✓
Sen. Rye	✓	
Sen. Svrcek		✓
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

Jody Bird
Secretary

5 5
Sen. Dick Pinsoneault
Chairman

Motion: ✓ Brown Harp - amendments
failed

CXU/P11 J

1-22-91

SB 49

amts
failed

422

Amendments to Senate Bill No. 49
White Reading Copy

Requested by Senator Pinsoneault
For the Committee on Judiciary

Prepared by Valencia Lane
January 22, 1991

1. Page 1, line 18.

Following: line 17

Insert: "(2) For purposes of this section, "school property"
means any building, area or space inside a building, or
outside area owned, leased, or made available to a school
for any school activity, academic or recreational, whether
owned by the school or not and whether on school property or
not, where a school-sponsored activity, academic or
recreational, is conducted."

Renumber: subsequent subsections

this? SEN. KENNEDY said no, but it does bring our statutes up to date with the list.

Closing by Sponsor:

SEN. KENNEDY stated this is a house cleaning bill and that updates the records every four years by the Board of Pharmacies to be sure our records coincide with the Federal records. I ask that you concur with this bill.

EXECUTIVE ACTION ON HB #419

Motion/Vote: REP. GOULD MOVED HB 419 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB #68

Motion/Vote: REP. GOULD MOVED SB 68 BE CONCURRED IN. Motion carried unanimously.

HEARING ON SB #49

CRIMINAL SALE OF DRUGS ON OR NEAR SCHOOL PROPERTY

Presentation and Opening Statement by Sponsor:

SEN. WATERMAN, SENATE DISTRICT 22, stated this bill is requested by the Board of Crime Control. Montana and Montana Schools have been leaders in the area of drug education and drug enforcement. One area that we lag behind other states is the area of establishing drug free school zones around our schools. SB 49 will help correct that situation. This bill establishes a zone around the school within 1000 ft of the school, where the criminal penalty is increased if you sell or possess drugs. We ought to think of schools as a safe place and rightly so. What we are saying in this bill is that it is not only illegal to sell drugs in the state of Montana but is especially a crime to sell to the young children at our schools. Another thing this bill does is allow us to access funds from the National Drug Free Coalition. This is a coalition that has funding to coordinate education programs for law enforcement as well as people within schools to strengthen their programs and work with programs.

Proponents' Testimony:

Ed Hall, Administrator - Board of Crime Control, stated we developed our anti-drug strategy in with the present control policy and our strategy set forth a protest toward a demand for reduction. This will be set forth in two ways. In the shorter term, will look at street level use. In the long term, we focus demand reduction on prevention and education efforts. As a part of the demand of reduction effort, the Drug Strategy Task Force set two legislative priorities this session. One of which is this drug free school zone.

John Connor, Drug Strategy Committee, stated he wanted to explain the construction of this measure. It was a bill that arose from of a sub-committee of the Drug Strategy Committee. We thought this bill was important because Montana was one of three states that did not given consideration to implementing legislation for drug free school zones. This bill constitutes a relatively conservative measure as far as drug free school legislation is concerned. In this particular issue, we amended the mandatory sentence provisions to say "violation of the exception is among those other statutes listed an offense for which the mandatory amendments apply". You cannot receive a suspended sentence if you are convicted of this offense. We also amended the section dealing with provision in parole to say that you have to serve half your time before you are eligible for parole if you commit this offense.

Colleen McCarty, self, stated she comes before the committee today as a mother of two young children. I would like to encourage you to give careful consideration to SB 49. As an active member of both state and national crime prevention organizations, I have traveled throughout the nation and become familiar with many crime prevention and growth reduction programs. SB 49 is a positive step toward the fight against drug prevention.

Judy Birch, Office of Public Instruction, stated the fight against drugs will be strengthened with the passage of this legislation. This bill will help in fostering a productive learning environment and will actively and visibly enforce the drug prevention programs within the schools. It will also provide students with their first exposure to the practical workings of the judicial system. We urge do pass of this bill.

Jess Long, School Administration of Montana, stated they are in support of this bill.

Bob Anderson, Montana School Board Association, stated our association adopted a similar resolution that passed unanimously to our membership in October. We are delighted to see the board of crime control came forth with this bill. We urge do pass.

Steve Browning, Coordinator - Montanans for a Drug Free Society, stated that a serious study of drug addiction will reveal we need comprehensive set of solutions to deal with the problem. All the illegal drugs produced in the world, this country consumes two-thirds of these drugs and we consist of only 5% of the world population. We have a genuine problem with drugs in the United States and urge a passage for this bill that will help the fight against drugs.

Kathy Seacat, Montana Parent Teacher Association, gave written testimony in favor of SB 49. EXHIBIT 1

Bill Sprinkle, Montana High School Association, stated they are in support of this bill. We think all chemical help programs should be supported and a drug free school zone would be an excellent way to do that.

Opponents' Testimony: none

Questions From Committee Members:

REP. TOOLE asked John Connor if it was intended that privately run vocational schools be included in this bill? Mr. Connor said he hadn't thought of that and this particular bill came from a model bill. I have no personal problem with covering that type of situation, but it doesn't coincide with what I said earlier about this bill addressing the school children. Our intention here was to try and make it apply to school children. It is not the intent of this bill to try and apply the proscriptions here to adult situations.

REP. BROOKE asked Dan Russell why is not the additional burden on the drug treatment program factored into the cost in the fiscal note? Mr. Russell said they have a request in right now, to greatly expand our drug treatment programs at the Montana State Prison and the Women's Correctional Center. We have a proposal before the sub-committee on institutions to include an intensive out-patient program and if that is funded it would handle this additional burden.

REP. JOHNSON asked Mr. Connor if you can receive a deferred or suspended sentence if you are convicted of this crime? Mr. Conner said that was correct.

REP. BOHARSKI asked Mr. Connor if we should change the age to 18 instead of having it at 17 because some high school students are 18 when they graduate? Mr. Connor said the intent of the bill is to protect children and when a child turns 18 they are considered an adult.

Closing by Sponsor:

SEN. WATERMAN stated she thought the committee had heard some good testimony. This is part of the overall effort to strengthen the laws that relate to the sale of drugs in the school areas. I ask you to concur with SB 49.

HEARING ON SB #140
ANABOLIC STEROIDS AS SCHEDULE III DRUG

Presentation and Opening Statement by Sponsor:

SEN. WATERMAN, SENATE DISTRICT 22, stated this is a bill that adds anabolic steroids to the schedule III dangerous drug list and provides misdemeanor penalties for persons in possession and

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-5-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/	<i>mm</i>	
REP. DAVE BROWN			/
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/	<i>mm</i>	
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/	<i>mm</i>	
REP. DIANA WYATT	/	<i>mm</i>	
REP. BILL STRIZICH, CHAIRMAN	/		

MONTANA CONGRESS OF

PTA

PARENTS AND TEACHERS

Testimony S.B. 49

House Judiciary Committee

EXHIBIT 1

DATE 2-5-91

SB 49

Chairman Strizich and Members of the House Judiciary Committee;

I am Kathy Seacat, member of the Helena Area Legislative Team for the Montana Congress of Parents and Teachers and a representative for our 10,000 members.

For nearly 100 years PTAs across this state and nation have advocated for children and youth and sought to secure adequate laws for their care and protection.

Our children's lives are increasingly touched by many problems, not the least of which is drugs. Support of this bill will help assure our children that while they are at school, they will be within a safe environment. It will also send a clear message that selling drugs near schools will not be tolerated by the state or community. We must do our best to keep our kids safe.

Just as important to the PTA, however, is the fact that by being a state with a law designating drug free zones around our schools, it allows our state to become a part of the Drug Free School Coalition which will then give our state and schools additional opportunities to tap into drug education resources.

It will be intolerable and inexcusable if we do NOT take advantage of every opportunity to 1. create a safe environment for children and youth and 2. to educate our children and youth to the dangers of becoming involved with drugs. Education is the first step to prevention.

When the future of our environment is threatened by neglect or pollution, Montanans meet the challenge. Drugs threaten the future of our young. So let's rise and meet this challenge, too.

The sheer magnitude of the drug problems call for support of S.B. 49 and the Montana PTA asks you to support this bill.

Thank you for your time and the opportunity to share our position with you.

Kathy Seacat
2472 Spokane Creek Road
East Helena, MT 59635

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB# 49
DATE 2-8-91 SPONSOR(S) Senator Wakeeman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Connor	Drug Strategy Committee	✓	
Kathy Seacat 2472 Spokane Cr. Rd. E. Helena Montana PTA		✓	
Jim W. Long	School Adm. of MT	✓	
Ed Hall	MBCC	✓	
Greg Birch	OPH	✓	
Colleen M. Hardy	Self	✓	
Wm. De	MSA	✓	
Bill Sprinkle	MHSA	✓	
Bob Anderson	MSBA	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON HB #391

Motion: REP. DARKO MOVED HB 391 DO PASS.

Motion: REP. DARKO moved to amend HB 391. EXHIBIT 4

Discussion: REP. DARKO stated during the hearing there were a lot of problems voiced about the confidentiality section of the bill. She said she called the Legal Staff at the Department of Family Services and had them go through language that could be used in the bill to tighten up this section. These resulting amendments are from the Utah code and have been narrowed down and tightened up. I think this legislation meets some of the problems people had and most specifically relative to the confidentiality issue.

REP. BROWN asked REP. DARKO if this is legislation the Catholics can live with relative to their Canon Laws? REP. DARKO replied saying "yes, these are better than they had requested."

REP. TOOLE asked REP. DARKO what the intent is of the language "in the course of discipline" mean? REP. DARKO said a lot of churches do not have Canon Law and go on church law. Some churches have a book of discipline. Church law is the same as church discipline.

REP. NELSON asked REP. DARKO how a clergyman would tell if the person was still counseling or asking for confession? REP. DARKO said the priest would ask the person if he/she was now confessing. He would let them know if they were confessing that he or she must keep of their statements confidential. However, if we are still engaged in counselling he or she must report anything that they feel needs be reported.

Vote: Motion carried 17 to 3 with Rep's: Nelson, Measure, Boharski voting no.

Motion: REP. DARKO MOVED HB 391 DO PASS AS AMENDED.

Discussion:

REP. RICE stated the amendments may make the bill a little better but no good enough over all to vote for.

Vote: Motion carried 11 to 9. EXHIBIT 5

EXECUTIVE ACTION ON SB 49

Motion: REP. STICKNEY MOVED SB 49 BE CONCURRED IN.

Discussion: REP. TOOLE stated he was concerned with the vocational school language on page 1, line 17. He stated he

would amend the bill by changing vocational school to Vo-tech centers.

Motion/Vote: REP. TOOLE moved to amend SB 49 as noted above.

Motion: REP. STICKNEY made a substitute motion to amend SB 49.

Discussion: REP. STICKNEY stated her amendment would leave out vocational school altogether and leave a period after secondary school. EXHIBIT 1. This would clarify which schools were involved.

Vote: Motion carried 16 to 4 with Rep's: Johnson, Clark, Gould and Keller voting no.

Motion: REP. DARKO MOVED SB 49 DO PASS AS AMENDED.

Vote: Motion carried.

EXECUTIVE ACTION ON SB 140

Motion: REP. DARKO MOVED SB 140 BE CONCURRED IN.

Discussion: REP. MEASURE stated he felt the teachers and coaches selling these drugs to people should have a higher penalty given to them than stated in this bill.

REP. DARKO stated this being listed as a Class II drug, it is setting the same penalties as SB 49.

Vote: Motion carried 19 to 1 with Rep, Whalen voting no.

EXECUTIVE ACTION ON HB 412

Motion: REP. GOULD MOVED HB 412 DO PASS.

Discussion: REP. TOOLE stated this bill is a concern to him because it doesn't address the problem of alcoholism.

Motion/Vote: REP. TOOLE moved to amend HB 412 at section 2 page 2 by inserting "in the position of driving while under the influence of alcohol or being in control of a motor vehicle while having a blood alcohol level of .10".

REP. MEASURE stated that was not the intent of the bill.

Motion: REP. DARKO MADE A SUBSTITUTE MOTION to amend HB 412 by striking line 22 on page 2 and taking out all reference made to

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-6-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON			/
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 49 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 17.

Strike: "or vocational school"